

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1194 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SUTHAR VASUDEVBHAI PRAHLADBHAI

Versus

THAKARDA KALAJI LALAJI

Appearance:

MR AJ PATEL for Petitioner

MR MC BHATT for Respondent No. 1, 2, 3, 4, 5, 6,
7, 8, 9

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. The petitioner herein is the original plaintiff
of Regular Civil Suit No.97 of 1994 pending in the Court
of Civil Judge (J.D.), Idar. The said suit is for
declaration and injunction and there was a prayer for

interim injunction below Exhibit 5, by which it was prayed that the defendants may be restrained from disturbing the possession of the plaintiff regarding the disputed land as mentioned in paragraph 1 of the plaint.

2. The defendants resisted the said suit on various grounds. The trial court granted application Exhibit 5 in favour of the present plaintiff. The aforesaid order was challenged by the present respondents herein by way of Civil Miscellaneous Appeal No.89 of 1995 which was filed before the District Court, Sabarkantha at Himatnagar. The aforesaid appeal was allowed and order of the trial court was set aside by the appellate court. The aforesaid order of the appellate court is impugned in this revision at the instance of the original plaintiff.

3. This Court, while admitting the revision application, had granted an interim relief in favour of the present petitioner by way of preventing the respondents from obstructing the physical possession of the petitioner over the disputed land. At the time of hearing of this revision application, both the sides have agreed that if the present petitioner, i.e. the original plaintiff of the aforesaid suit, is allowed to work as Court Receiver and if he is directed to submit necessary accounts before the trial court during the pendency of the suit and further by way of direction that he should deposit 50% of the amount which he might realise from the disposal of the crop, may for the time being put an end to the controversy which is raised in this revision application. The aforesaid agreement is arrived at by the parties especially because the civil suit pending in the trial court has already reached final hearing stage and this Court is informed that one witness is already examined by the original plaintiff. In view of the aforesaid consensus between the parties, the following order is passed :-

The petitioner herein Suthar Vasudev bhai Prahladbhai is ordered to cultivate the disputed agricultural land as a Receiver of the Court. Whatever may be the income from the agricultural operation of the aforesaid field, 50% of the same may be deposited with the trial court by the plaintiff. The plaintiff is also directed to submit regular accounts before the trial court till the suit is over. The plaintiff in case of disposal of the crops, will dispose of the same in presence of Court Commissioner, who may be deputed by the trial court on joint application of the concerned parties. The cost of the Commissioner shall be borne by the plaintiff and ultimately, as stated earlier, the same

also may be subject to the final outcome of the suit. In any case, at the time of disposal of the crop, the same should be done only in the presence of the Court Commissioner. The plaintiff will also submit necessary accounts regarding income and expenditure of the cultivation of the aforesaid disputed land. This agreement is subject to the final outcome in the civil suit and ultimately, it is to be adjusted as per the decree passed by the trial court. It is directed that the petitioner in the meanwhile, i.e. during the pendency of the suit, shall not transfer, alienate or deal with in any manner the aforesaid suit land and he will carry out the agricultural operation and cultivation personally on his behalf and for that purpose, he will not transfer the land to any one in any manner. In view of the same, the trial court is also accordingly directed to dispose of the aforesaid suit in any case before 31st of December, 2000 and compliance report of disposal of the suit also may be sent to this Court. It is clarified that whatever observations made in the order of the trial court below Exhibit 5 and by the appellate Court while deciding the aforesaid Civil Miscellaneous Appeal, shall not be taken into consideration and the suit may be disposed of on its own merits and on the basis of the evidence which might be led by the parties.

4. Both the sides submitted before this Court that their clients are agreeable to the aforesaid order which this Court has passed.

5. Revision Application is accordingly disposed of in view of the aforesaid agreement. Rule discharged. Interim relief is vacated as per the orders above. There shall be no order as to costs.

4th August, 2000 (P.B. Majmudar, J.)

(apj)